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ARIZONA ATTORNEY GENERAL

September 25, 1954
Opinion No. 54-135

TO: Mr. Alfred Thomas, Jr.
Registrar and Chairman
Admissions and Standards Committee
Arizona State College
Tempe, Arizona

RE: Residence tuition fees.

QUESTION: For tuition purposes, what is the residence status of a minor who is the son of an alien mother, who has resided in the State of Arizona during the past year?

In order to properly answer the above question, we shall assume the following fact situation to be true, to-wit: A minor, aged 19 years, the son of an alien mother and a citizen father (the father being now deceased), born in the state of Illinois, moved to the state of Arizona on or about July, 1953. The minor now resides with his mother in the City of Phoenix, and has recently applied for admission to the Arizona State College requesting a residence classification for the coming school year, notwithstanding the fact that he attended the college during the preceding school year on a non-residence basis. After application by the minor for a residence classification, the college took the position that the minor would not be classified as a resident unless and until his alien mother had taken out first naturalization papers.

We must first consider several general rules of law which have heretofore been brought to the attention of the college. We shall briefly summarize them in order that they may be kept in mind as they relate to the above question.

The Arizona Supreme Court has stated that a minor's residence must be considered to be that of his parents, guardian, or person in the position of local parentis (In Re Webb's Adoption, 1947, 65 Ariz. 176, 177 P. 2d 222).

In the present fact situation one parent, the father, is now deceased, thus presenting the question of whether or not the minor's mother may establish a domicile separate and apart from the domicile theretofore acquired by the husband and wife. 28 C.J.S. 27, Section 12-B-3, Domicile, provides generally that after the husband's death, the

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wife has a right to elect her own domicile, but she retains the last domicile of her deceased husband until she makes an actual change. This being true, the alien mother here in question has from all indications, effected a change of domicile to the state of Arizona. Naturally, any specific conclusion as to whether or not an actual change has occurred must be tested by the intention on the part of the mother to establish a new domicile in this state, coupled with an actual removal to this jurisdiction. In absence of contrary evidence, it would be the opinion of this office that such a domicile has been acquired.

A further question arises relative to the right of an alien to establish a domicile even though such person is not entitled to all of the rights and privileges of a citizen. According to 2 Am. Jur., Aliens, Section 3, an alien may be classified as either a resident or a non-resident of a particular jurisdiction. In effect, citizenship and residence (residence being equivalent to domicile for our purposes) exists separate and apart from each other. In other words, an alien although not a citizen of the United States, may nevertheless acquire a separate domicile or residence within the various subdivisions and jurisdictions of the United States.

To this point then, we have established that the student with whom we are concerned, being a minor, is a resident of the State of Arizona by virtue of his mother having established her residence within our jurisdiction. The remaining question for our determination is whether the statement appearing on page 55 of the College Catalogue for the 1954-55 academic year would prohibit the minor from obtaining a residence classification. The statement in pertinent part, reads as follows:

"A student to be considered a legal resident of Arizona for the purpose of registering at the Arizona State College at Tempe must present evidence as follows:

* * * * *

(3) If an alien who has taken out first naturalization papers - that residence has been maintained in the state for at least 1 year previous to registration."

It is the opinion of this office that the above quoted statement referring to the taking out of naturalization papers refers only to a student registering at the college and could not and should not be extended to mean that the mother of a citizen of the United States would be required to make application for naturalization papers before her son could be considered a resident (or domiciliary) of this state. The statement by its own wording, has reference only to the student and not to other persons such as a parent.

In arriving at the above conclusion we are not unmindful of the constitutional and statutory rule (set forth in Section 55-512, A.C.A. 1939, as amended, and the Arizona Constitution) which states that a person does not gain or lose his residence while a student in an

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institution of learning. Our interpretation of this provision does not exclude the possibility that a person may gain residence in this state by virtue of other factors apart from attendance at an institution of learning, for example, the gaining of residence by a minor when his parents move to this state even though the minor may at that time or thereafter attend a college, university, or similar institution.

In answer to the question, it is the opinion of the Department of Law that upon the assumed fact situation stated above, the minor student in question is at this time entitled to a residence classification and should be permitted to attend Arizona State College at Tempe upon payment of the stipulated fees required of resident students.

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The Attorney General

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